

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Oct 02, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

ADAM J.,¹

Plaintiff,

vs.

MARTIN O'MALLEY,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 2:22-cv-00241-RHW

**ORDER ADOPTING REPORT
AND RECOMMENDATION TO
DENY PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT
AND GRANT DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

ECF Nos. 11, 13, 16

Before the Court is the Report and Recommendation issued by Magistrate Judge Alexander Ekstrom, ECF No. 16, recommending Plaintiff's Motion for Summary Judgment, ECF No. 11, be denied and Defendant's Motion for Summary Judgment, ECF No. 13, be granted. Plaintiff filed objections to the Report and Recommendation and Defendant responded. ECF Nos. 17, 18. After reviewing the Report and Recommendation, the Court finds the Magistrate Judge's findings are correct. Therefore, the Court adopts the Report and Recommendation in its entirety with the following additional explanations.

¹ To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names. *See* LCivR 5.2(c).

1 Under the Federal Magistrates Act (Act), the Court may “accept, reject, or
2 modify, in whole or in part, the findings or recommendations made by the
3 magistrate.” 28 U.S.C. § 636(b)(1). A party may file “specific written objections
4 to the proposed findings or recommendations.” Fed. R. Civ. P. 72(b)(2). If a party
5 objects to a magistrate judge’s findings and recommendations, “the court shall
6 make a de novo determination of those portions of the report or specified proposed
7 findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P.
8 72(b)(3).

9 The Court has conducted a de novo review of the entire record and the
10 Report and Recommendation. The Court agrees with the Report and
11 Recommendation’s findings and conclusions. Plaintiff’s objections restate
12 previously presented arguments addressed in the Report and Recommendation.
13 *Compare* ECF No. 11 *with* ECF No. 17. Accordingly, the Court need not address
14 each objection at length again. *See, e.g., El Papel LLC v. Inslee*, 2021 WL 71678,
15 at *2 (W.D. Wash. Jan. 8, 2021) (“Because the Court finds that nearly all
16 objections are merely a rehash of arguments already raised and decided upon by
17 the Magistrate Judge, the Court will not address each objection here.”); *Aslanyan v.*
18 *Herzog*, 2014 WL 7272437, at *1 (W.D. Wash. Dec. 17, 2014) (rejecting a
19 challenge to a magistrate judge’s report and recommendations when “all of
20 [plaintiff’s] objections simply rehash arguments contained in his amended opening

1 memorandum or in his reply memorandum”).

2 The Report and Recommendation properly concludes substantial evidence
3 supports the ALJ’s rejection of Plaintiff’s counselor Jacqueline Lucas’ opinion.
4 Plaintiff’s objection disregards the handwritten narrative Ms. Lucas included on
5 the form opinion which states:

6 Assessing mental health capacities is not a specialization of [Ms.] Lucas.
7 [Ms.] Lucas’ training [and] background in positive [psychology] could
8 impact assessment for the better. Per [Plaintiff’s] reports it sounds like he is
able to maintain a job for a minimal amount of time before PTSD symptoms
cause him to lose his job or quit.

9 Tr. 645. Based on the foregoing, the ALJ’s conclusion that Ms. Lucas’ opinion
10 was less persuasive based on an over-reliance on Plaintiff’s self-report and lack of
11 other narrative reference to the medical record is supported by substantial
12 evidence. Furthermore, the ALJ’s conclusion that Plaintiff was able to function to
13 a greater degree than identified by Ms. Lucas was reasonable and supported by the
14 opinion. Although the ALJ did not cite all of the records in the paragraph
15 discussing Ms. Lucas’ opinion, he was not required to repeat it where it was stated
16 elsewhere in the decision. Plaintiff’s alternative interpretation of the evidence does
17 not deprive the ALJ’s finding of substantial evidence. *Morgan v. Comm’r of Soc.*
18 *Sec. Admin.*, 169 F.3d 595, 601 (9th Cir. 1999) (“[W]hen evidence is susceptible to
19 more than one rational interpretation, the ALJ’s conclusion must be upheld.”).

20 In addition, Plaintiff has failed to demonstrate the ALJ harmfully erred in the

1 analysis of state agency psychiatrist Eugene Kester’s opinion (Tr. 170-72). Dr.
2 Kester opined that Plaintiff was *not disabled* and capable of persisting through a
3 regular workweek with adequate breaks, despite finding that Plaintiff would also
4 have “difficulty in maintaining attention and concentration as well as difficulty
5 maintaining regular attendance when [mental health symptoms] are exacerbated.”
6 Tr. 171. The Report and Recommendation concludes that any error in not fully
7 crediting any portion of Dr. Kester’s opinion was harmless because even if
8 credited, the opinion supports the ALJ’s determination that Plaintiff is not disabled.
9 ECF No. 16 at 11. Plaintiff claims that because the ALJ did not make findings as
10 to the number of days Plaintiff would be absent when his symptoms were
11 exacerbated, the Court cannot find harmless error. ECF No. 17 at 7. However, the
12 ALJ’s opinion provides adequate explanation as to why absenteeism limitations
13 were not included in the residual functional capacity. The ALJ found that Plaintiff
14 experienced “some transient episodes where he would experience increased
15 symptoms,” but that Plaintiff was otherwise stable and improving with “generally
16 conservative forms of care” in the form of medication management, therapy and
17 monitoring of his conditions. Tr. 29. The ALJ further reasonably concluded that
18 episodes were often treated with additional changes to medication without
19 requiring “more intensive care” and Plaintiff’s functioning during episodes was not
20 representative of Plaintiff’s maximum level of functioning throughout the relevant

1 period. *Id.* Accordingly, the requested remand for further findings as to
2 absenteeism is not warranted, and as Dr. Kester concluded Plaintiff was not
3 disabled notwithstanding his limitations, Plaintiff cannot demonstrate harmful error
4 in the ALJ's analysis of Dr. Kester's opinion.

5 For the reasons stated in the Report and Recommendation, the ALJ also gave
6 specific, clear and convincing reasons supported by substantial evidence for giving
7 less weight to Plaintiff's symptom claims based on the inconsistent objective
8 medical evidence, improvement with treatment, and activity levels. Plaintiff
9 asserts his subjective claims are "well-supported," but Plaintiff relies almost
10 exclusively on the medical evidence documenting symptoms he experienced in
11 June 2021, which the ALJ also acknowledged in the analysis. ECF No. 17 at 9.
12 Based on the Court's review of the records cited by the ALJ, the Court finds that
13 the ALJ appropriately relied on the longitudinal record, and not on a few isolated
14 records.

15 Plaintiff claims the Report and Recommendation "simply rubberstamps" the
16 ALJ's step three findings "without sufficient analysis." ECF No. 17 at 8. This
17 objection is frivolous as the Report and Recommendation devotes over three pages
18 thoroughly analyzing the ALJ's step three decision and Plaintiff's failure to meet
19 his burden. In summary, Plaintiff's claim he meets a Listing relies upon the
20 opinion of Ms. Lucas, which the ALJ reasonably discounted, and Plaintiff failed to

1 otherwise satisfy his step three burden of establishing that he has an impairment
2 that meets or equals the requirements of the Listings.

3 Finally, Plaintiff's objection restates the same arguments as to steps four and
4 five which the Report and Recommendation appropriately rejects. The ALJ's
5 error at step four was harmless because the ALJ made alternative findings at step
6 five, and Plaintiff's step five argument hinge upon other rejected assignments of
7 error. Accordingly, **IT IS ORDERED:**

8 1. Plaintiff's objections to the Report and Recommendation, **ECF No. 17**,
9 are **OVERRULED**.

10 2. The Report and Recommendation, **ECF No. 16**, is **ADOPTED** in its
11 entirety.

12 2. Plaintiff's Motion for Summary Judgment, **ECF No. 11**, is **DENIED**.

13 3. Defendant's Motion for Summary Judgment, **ECF No. 13**, is
14 **GRANTED**.

15 The District Court Executive is directed to enter this order, **ENTER**
16 **JUDGMENT** in favor of Defendant, forward copies to counsel and Magistrate
17 Judge Ekstrom, and **CLOSE THE FILE**.

18 DATED October 2, 2024.

19 s/Robert H. Whaley
20 ROBERT H. WHALEY
Senior United States District Judge